

# MARK-UP OF H.R. 2844, THE CONTINUITY IN REPRESENTATION ACT OF 2003

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## HEARING BEFORE THE COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS FIRST SESSION

HEARING HELD IN WASHINGTON, DC, NOVEMBER 19, 2003

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## MARKUP OF H.R. 2844, THE CONTINUITY IN REPRESENTATION ACT OF 2003

WEDNESDAY, NOVEMBER 19, 2003

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOUSE ADMINISTRATION,  
*Washington, DC.*

The committee met, pursuant to call, at 10:17 a.m., in Room 1310, Longworth House Office Building, Hon. Robert W. Ney [chairman of the committee] presiding.

Present: Representatives Ney, Ehlers, Mica, Linder, Larson, Millender-McDonald, and Brady.

Staff Present: Paul Vinovich, Staff Director; Fred Hay, Counsel; Matt Petersen, Counsel; George Shevlin, Minority Staff Director; and Matt Pinkus, Minority Professional Staff.

The CHAIRMAN. The committee is now in order for the purpose of consideration of House Resolution 2844, the Continuity in Representation Act of 2003.

It has now been over 2 years since the horrific events of September 11, 2001, a day in which terrorist enemies of the United States murdered thousands of innocent American citizens in cold blood and struck devastating blows against symbols of our country's economic and military power. Since that grim day we have been forced to contemplate the dreadful possibility of a terrorist attack aimed at the heart of our Nation's government here in Washington, D.C., possibly carried out with nuclear, chemical, or biological weapons of mass destruction. Such an attack could potentially annihilate substantial portions of our Federal Government and kill or maim hundreds of Members of Congress. Though we earnestly pray we are never confronted with such an awful event, we have a duty as elected Representatives of the people of the United States to ensure that the people's House continues to operate effectively in the event of a catastrophic terrorist attack.

I know no one wants to talk about the potential demise of themselves, but it is something I think we face today in our world, and we can just see in the last 2 years things happened that we wouldn't believe could have happened in this complex.

This past September this committee held a hearing on H.R. 2844, to allow leading thinkers on the issue of congressional continuity to provide insight on the many different aspects of this congressional and consequential issue. To restate what I said then, the debate on this subject essentially divides it into two camps: those who view a quick reconstitution of the House as the most important consideration and thus support a constitutional amendment allowing for the appointment of temporary replacements to fill vacant

House seats, and those who believe retaining the House's elected character is paramount and therefore support expedited special elections as the exclusive means for reconstituting the House of Representatives.

Though the two sides of the debate disagree on many fundamental issues, both agree that expedited elections should be part of the solution to this complex and difficult question. For this reason, the committee has scheduled this markup to consider H.R. 2844, which establishes a framework for conducting expedited special elections to fill House vacancies resulting from a catastrophic terrorist attack.

As originally drafted, the Continuity in Representation Act calls for expedited special elections to be held within 21 days of the Speaker of the House announcing that more than 100 vacancies exist in the House of Representatives. The political parties authorized by the State law to make nominations would then have up to 14 days after the Speaker's announcement to nominate a candidate. However, the State would not have had to hold an expedited special election if a regularly scheduled general election were to be held within 51 days of the Speaker's announcement, thus in essence providing the 30-day extension for such States.

The original version of H.R. 2844 also contained among other things a provision stating that the Speaker's announcement of 100 or more vacancies could not be appealed.

Today I will be offering an amendment in the nature of a substitute to H.R. 2844. The amendment retains the basic framework of the original bill but alters the time frames and makes other technical adjustments.

The deadline for holding an expedited special election following the announcement by the Speaker of more than 100 vacancies has been increased from 21 days to 45 days. The theory behind this is to make the election process work a little bit better. It was felt that 21 days may not be able to be met, but yet it did not need to go too far down the road. This change is deemed necessary to accommodate the concerns, again, of election officials who felt the 21-day time frame was too short and may not have allowed for adequate preparation. And I can tell you that those concerns were from both sides of the aisle of election officials.

The amendment also shortens the time frame within which State party officials may nominate a candidate from 14 days to 10 days after the Speaker's announcement. The shortened nomination period would provide additional time on the back end for election officials to print ballots, test election systems, recruit poll workers, et cetera, while still allowing party officials adequate time to make candidate nominations. Just as the original bill provided a 30-day extension from 21 to 51 days for States whose election machinery was already in motion, the amendment likewise extends the 45-day period for holding an expedited special election by 30 days under those circumstances that I previously mentioned.

Therefore, the amendment states that if a State is scheduled to hold a general election within 75 days of the Speaker's announcement of more than 100 vacancies, it would need to schedule—it would not need to schedule an expedited special election. Nature would take its course on what was already scheduled.

Finally, the amendment deletes section 4(b) of the original bill. The Parliamentarian determined that this section, which stated that the Speaker's announcement of House vacancies in excess of 100 could not be appealed, was unnecessary since it is already duplicative of current House rules. The committee takes no position on any proposed constitutional amendments that would provide for the appointment of temporary replacements to fill vacant House seats, since amendments to the Constitution are outside. However, even if the committee were inclined to take a stance on issues outside of this jurisdiction, it is unaware of any constitutional amendments regarding congressional continuity that have been introduced in the House on which it could take a position at this time.

Some will claim this bill is inadequate and only a constitutional change will address this problem. They will assert that expedited elections will result in disenfranchisement of absentee and military voters, among others. While no election is perfect, it is true that conducting them on a shortened time frame could make them even less perfect than we would prefer under ideal circumstances, and this is something I fully recognize. Those who view this as a defect of legislation, though, should compare the danger of disenfranchising some percentage of the population against the certainty of disenfranchising 100 percent of the population of the country if Members no one voted for are allowed to be appointed and allowed to serve.

Regardless of one's view on the appointment question, we should all agree that rapid reconstitution of elected bodies should be our goal. This legislation advances that goal. Therefore, the committee seeks to move this process forward by marking up H.R. 2844 which furthers the essential objective, ensuring a functioning House would be in place with the ability to operate with legitimacy in the wake of a catastrophic attack.

I appreciate the members for being here today, and I want to defer to our Ranking Member, Mr. Larson of Connecticut.

Mr. LARSON. Thank you, Mr. Chairman.

Mr. Chairman, I want to begin by first complimenting you for holding the continuity of government hearing back on September the 24th, which ranged over the entire landscape, as you have noted in your comments, on the continuity of the government issue.

Now, I can honestly say, though, in my relatively short tenure as a Member of the House, this was perhaps one of the most illuminating presentations and give-and-take between members and witnesses that I have had an occasion to participate in and to learn from and enjoy. I especially want to point out that both Chairmen Sensenbrenner and Dreier made a vigorous presentation of their strongly held views, and it was useful for those of us who may strongly disagree to engage in debate with those who feel passionately about this issue.

I also want to express my thanks to the panelist scholars, the officials, and the group representatives who participated. Norm Ornstein and Tom Mann and the Continuity of Government Commission have led the public discussion of this issue since 9/11. Doug Lewis of the Election Center and Minnesota Secretary of State Mary Kiffmeyer thoughtfully presented to us the difficulties in conducting elections under adverse circumstances and with artificial

time frames. Don Wolfensberger of the Woodrow Wilson Center demonstrated how minds can change—in his case, on the subject of congressional disability—and consider possible compromises after exposure to vigorous debate.

Representatives Frost and Baird, who oppose the bill before us today and support a constitutional amendment, should be congratulated for their leadership. Representative Frost played a critical role in sensitizing Members of Congress to these issues in his work as co-chair on the Task Force on Continuity with Representative Cox. Representative Baird has introduced a thoughtful constitutional amendment in the last Congress and is preparing another version, and has been working with the Parliamentarian on this issue since this tragic event of September 11th.

I emerged from that hearing myself strongly supportive of a constitutional amendment, because I believe it provides the best remedy for what I believe the Chairman has articulated eloquently in his opening comments: for all of us to face a potential demise, and a demise that if it was of a catastrophic nature would probably be at the hands of terrorists. And the one thing that terrorists have to be assured of is that democracy is prepared to stand back up immediately.

In the aftermath of September 11th, in a matter of only days, this Congress acted on \$40 billion. This Congress acted to take immediate and appropriate steps. Even with the provisions and the enhancements in the H.R. 2844, which I believe is thoughtful, I clearly understand the concept of making sure that the House is an elected body. But I wanted to quote an old sage of Congress and someone who I believe demonstrated quite well the concerns that I share. That is former Senator Alan Simpson from Wyoming, who was the co-chair of the Continuity Commission, and who at a recent hearing said the troublesome part in this continuum mantra—that is we don't want to alter the character of the House—is it comes from pride. "I am going to call it that, saying that we have always been directly elected by the people." He said. "That phrase comes from those who oppose what we do. They say we can't have anything like that because it would alter the character of the House."

"The people's House. A direct election. How troubling. How un-American. How undemocratic. I want to ask them a question. What more could alter the character of your body than bodies?"

I agree with Senator Simpson that a functioning House, even in a temporarily modified form, is far better than no House at all. No House means no Congress, no legislation, and, in the end, no voice for the people and no more democracy. It would also, as anyone who seeks to bring down this government would understand, create chaos in a time when the immediate message and resolve of this great institution of ours should be to stand up immediately, just as we are seeking to stand up the Iraqi people immediately today to face the problems that they are encountering in their country. What greater example than a remedy for the United States Congress to be able to endure in the face of a catastrophe—as the Chairman points out that we all pray will never happen, and we will work to make sure that it doesn't, but we have to prepare for that possibility, and do so in a manner that any terrorist or any

person seeking to bring down this government knows that our traditions will be buttressed by constitutional amendment ensuring a working government in a relatively short period of time.

I further believe that especially for our country since September 11th, where we saw such a patriotic outpouring of people and individuals who care deeply about this country, from the display of flags to the volunteer efforts that took place all around this country, that a great educational opportunity would be the same kind of dialogue and discussion that we had here in this committee. I don't know that a constitutional amendment would pass, but I sincerely believe that we need the opportunity to bring this dialogue and debate back to our State legislators.

I intend to introduce legislation myself, a constitutional amendment, and the Chairman points out this is not the committee of jurisdiction in which to do that. And it presents a quandary for us, because our bills are like ships passing in the night. The Chairman noted that there are two distinct efforts to address this problem, one outlined by the Commission, others, and supporters of the constitutional amendment; others as have been outlined in the bill that is before us today. Both are worthy proposals. I think both need an up-or-down vote.

I intend to write the Speaker. I think that having sat in last week on what was an incredible historic moment where the four living Speakers talked about their speakership, talked about this great House, I think this is one of those moments in history that transcends the legislation before us and requires the kind of leadership that is going to recognize that what is more important than individual legislation or any one of us is that the democracy and our institution be able to stand up immediately.

A constitutional amendment would provide that, and that is why I favor it, and that is why I, reluctantly and without prejudice, will vote against the proposal before us. I believe that we need to go forward on concurrent paths and there has to be implementing legislation, and the thoughtful measures that Mr. Sensenbrenner and Mr. Dreier and the principles on which they base their legislation ought to be incorporated in that.

But my grave concern and fear is that we need to demonstrate to the entire world that no terrorist act can cripple this government. And we have three Members in this body, on this committee alone, who came here by special elections; none of them in a 45-day period. Mr. Ehlers', I think, selection took approximately 120 or 102 days. Ms. Millender-McDonald came here in a special election as well that took in excess of 100 days. Mr. Brady's election took 188 days.

It is simply, while idealistic and an important matter to preserve, the daunting task that we face I believe requires us at least to have this debate and dialogue on the floor. And it is my hope that that will take place, though I fully acknowledge that that is a matter to come before another committee, not this.

I thank the Chair who said to me that he would clearly indulge anything of this nature, but recognized that it would not come before this committee. And that is my sincere belief.

I have extended remarks, Mr. Chairman, and some questions that I would like to ask, but at this time I would yield back to you.

The CHAIRMAN. I want to thank the Ranking Member for his thoughtful comments.  
[The statement of Mr. Larson follows:]



**STATEMENT OF REP. JOHN LARSON OF CONNECTICUT**MARKUP OF H.R. 2844

"CONTINUITY IN REPRESENTATION ACT OF 2003"

WEDNESDAY, NOVEMBER 19, 2003

Mr. Chairman, I want to begin by complimenting you for holding the continuity of government hearing of September 24, 2003, which ranged over the entire landscape of continuity of government issues. In my relatively short tenure as a member of the House since 1999, this was perhaps the most illuminating presentation and give-and-take between the Members and the witnesses that I have had the occasion to participate in, learn from and enjoy. Chairmen Sensenbrenner and Dreier made a vigorous presentation of their strongly-held views, and it was useful for those of us who may strongly disagree to engage in debate with those who feel passionately about an issue.

I also want to express my thanks to the panel of scholars, officials and group representatives who participated. Norm Ornstein and Tom Mann and the Continuity of Government Commission have led the public discussion of these issues since 9/11. Doug Lewis of the Election Center and Minnesota Secretary of State Mary Kiffmeyer thoughtfully presented to us the difficulties in conducting elections under adverse circumstances, and artificial time frames. Don Wolfensberger of the Woodrow Wilson Center demonstrated how minds can change--in his case, on the subject of congressional disability-- and consider possible compromises after exposure to a vigorous debate.

Reps. Frost and Baird, who oppose the bill before us today and support a constitutional amendment, should be congratulated

for their leadership. Rep. Frost played a critical role in sensitizing Members of Congress to these issues in his work as co-chair on the task force on continuity with Rep. Chris Cox in 2002. Rep. Baird introduced a thoughtful constitutional amendment in the last Congress and is preparing another version.

I emerged from the hearing strongly supportive of a constitutional amendment to allow temporary appointees to serve in the House pending expedited special elections. I am working on a draft of that proposal, and will hold a forum with academic experts in Hartford, Connecticut on December 1 to involve the public directly in the critical debate we must have.

Mr. Chairman, the reason the issue of congressional continuity has not yet reached critical mass is that the Members are reluctant to confront their own mortality, to deal with the unpleasant mechanics and technical details of their own demise or potential incapacity. Unfortunately, our adversaries are thinking about just those things, all the time, and planning the details carefully, as saw on September 11. We must demonstrate similar intensity.

In addition to thwarting terrorists in the short term, we must also ensure that, if an attack actually succeeds in damaging the personnel of our government, that it fails in its ultimate objective to destroy the functioning of government, which is what gives substance to our principles of democracy. September 11 has forced us to confront the fact that gaps and flaws in our constitutional system exist, and that survival of the system is more important than the survival of any individual. Now we must back that up with substantive action.

That is why I am disappointed that the House Administration Committee is rushing H.R. 2844 through today. The substitute amendment that is expected to be proposed in the markup tinkers

around the edges of the flaws in the original bill, but fails to fully address them.

The Majority apparently crafted the substitute based on a line in Mr. Doug Lewis' testimony at our hearing, in which he summarized the views of state elections administrators polled by his organization:

“While the responses indicated a variety of dates ranging from the shortest time...of 35 days (after determination of who the candidates will be) to a period of four months, it appears that elections administrators feel they can conduct an election with as few as 45 days. However, the election officials would be far more confident that the interests of democracy would be best served by having up to 60 days to get the elections organized and held. Each additional day beyond the 45-day minimum time frame creates greater confidence in the process.” (Page 3 of testimony of R. Doug Lewis, Executive Director of the Election Center, before the Committee on House Administration)

I would point out that Mr. Lewis has not endorsed the Sensenbrenner substitute before us today.

If the House loses its ability to function due to the absence of a quorum, under certain worst-case scenarios of mass deaths and incapacity which we must nevertheless consider as very real possibilities, the House might remain paralyzed for at least 45 days under the provisions of H.R. 2844. The bill would accept that premise. I cannot.

As Dr. Ornstein has written: “...If there are huge numbers of dead or incapacitated Members of the House, a resort to special elections would leave a gap of two to three months without a

House or with a House wildly unrepresentative politically or geographically of the country. “(*Roll Call*, September 3, 2003)

The American people must be able to count on a functioning Congress in the wake of a catastrophic terrorist attack. Two days after 9/11, Congress passed legislation expediting benefits for public safety officers killed or injured in the line of duty. Three days after 9/11, Congress appropriated \$40 billion in emergency funds and approved legislation supporting the use of military force. A week later, Congress enacted important legislation affecting our economy and securing the air transport system, and compensating the victims of the 9/11 attacks. Had events unfolded differently, none of this legislation might have been enacted in timely fashion. Or the President might have usurped constitutional powers of Congress, hoping for subsequent ratification of his actions.

I believe it is essential to consider a constitutional amendment that is the only way to effectively remedy structural deficiencies in the Founders’ plan for our country, deficiencies which they could not have foreseen.

I also support the idea of a new statute that seeks to expedite the conduct of special elections and replenish the House more quickly in the event of a catastrophe, but it needs to be done in concert with a constitutional amendment and with respect for views of the states.

Such a statute should not place new unfunded mandates upon the states.

It must allow sufficient time for the public to participate in campaigns and to learn the views of the candidates.

It needs to allow independent candidates an opportunity to access the ballot.

It needs to allow time for polling places to be arranged, ballots to be printed and distributed, poll workers to be trained, and for absentee and military voters to learn about the election and to request, receive, and transmit their votes in time to be counted.

The Democratic staff recently spoke with the Director of the Military Voting Rights Project at the National Defense Committee, Mr. Samuel Wright, who testified in Senate Judiciary Committee hearings on continuity in September 9. He wrote: "In the sort of short-notice special election that you envision here, military absentee voting (or any absentee voting) would be completely out of the question."

Special elections currently come in all shapes and sizes under different state laws, with widely varying deadlines to meet, some with and some without requirements for party primaries, and some without the need for candidates to even identify with parties; some also require runoffs.

We have three members of this committee who were chosen in special elections. The seat won by Mr. Ehlers of Michigan became vacant on July 31, 1993, he won a Republican primary on November 2, and a special election on December 7. That was 129 days between the time of the vacancy and the time of the election, and it included a primary election.

The seat won by Ms. Millender-McDonald of California became vacant on December 15, 1995; she won an unusual primary election on March 26, 1996, which also doubled as the final special election since all of the candidates she defeated were also Democrats, which negated the state's normal requirement to have all of the top finishers from different parties compete in a runoff. That vacancy lasted 101 days.

The seat won by Mr. Brady of Pennsylvania became vacant on November 11, 1997. He was nominated by a Democratic party committee and then won a special election on May 19, 1998, timed to coincide with the state's primary for the regular two-year term. Thus the total was about 189 days, and that was without a primary.

So the special election with the lowest degree of complexity resulted in the longest period of vacancy, because the state decided to allow a longer campaign and to consolidate the election with others to save time and money. All of these elections took place in safe one-party districts, and all of them took far longer than the time-frame envisioned by H.R. 2844.

I mention this to point out that one size does not fit all, as this bill would seek to require. There is nothing inherently wrong with not having primaries in special elections. Under current laws in state which omit them in special elections, such as Pennsylvania, New York, and, as we shall shortly see when our colleague Rep. Fletcher resigns, in Kentucky, the public can still reject unsatisfactory party nominees in favor of third party or independent candidates, or write-in candidates. But H.R. 2844, which appears to ban primaries, might not allow that because there might not be time for other candidates to qualify for the ballot.

In the majority of states which have special election primaries, the abolition of primaries and the enhanced status of party committees or party conventions or vacancy committees would result in elections which might be seen in those states as undemocratic. Winners of such special elections would serve for the remainder of the term of office, perhaps as long as two years. Under possible constitutional amendments, appointed temporary Members might serve, at most, for only a few months.

An overriding problem in crafting legislation is that the House Administration Committee has jurisdiction over laws

relating to Federal elections, while the House Judiciary Committee has jurisdiction over constitutional amendments. That committee has held a hearing, yet refuses to go further. But its hesitation does not excuse action in haste by our committee.

The joint congressional leadership has responded to the complex thicket of issues and jurisdictional problems by proposing a joint committee to conduct a study and make recommendations late next year. The joint committee could not report legislation. The House has passed a concurrent resolution to create this entity, but it is unlikely that the Senate will agree, so the issues remain squarely before the standing committees of the House.

I believe that only public alarm and public pressure will generate sufficient impetus to push members of the House and Senate to deal seriously on this matter. I applaud the continuing work of the Continuity of Government Commission of the Brookings Institution and the American Enterprise Institute to focus public and media attention on the subject. Sen. John Cornyn, who has led the Senate Judiciary Committee in a series of thoughtful hearings, recently introduced a constitutional amendment (S. J. Res. 23) to facilitate reconstituting the Congress along with detailed implementing legislation that could be considered following ratification of an amendment itself by the states.

My proposal for a constitutional amendment, in its present form and subject to further change, would allow temporary appointees chosen by the state legislatures, or, in their inability to act, by state governors, to serve in the House pending special elections to replenish the elected membership of the House. This would be similar to the way the members of the First and Second Continental Congresses were chosen.

The constitutional amendment would apply only in the most extreme circumstances--when vacancies exist in the majority of seats in the House. I am considering adding to my proposal provisions regarding disability of Members of the House, a matter which can probably be addressed only through a constitutional amendment and which has long been considered the most intractable out of the range of continuity issues.

Under some circumstances, following a catastrophe, the House might be able to continue to function as long as a majority of the Members "chosen, living and sworn" --the definition of a quorum accepted as the appropriate constitutional standard by both houses of Congress for nearly a century--could appear in the chamber, or wherever the House might be meeting, no matter how few in number they might be.

However, while such a House might technically be able to act, it would lack legitimacy in the eyes of the American people and might be unbalanced in terms of political party, geographic representation and range of ideological views, compared to a fully populated House.

And in the event a majority of those "chosen, living and sworn" consisted of incapacitated Members who could not come to the Floor, or function at all if they were brought there, the House might be paralyzed completely. Of course, our goal would be to have the people fill all of the vacant seats by election, as they always have. However, that takes time--too much time under any reasonable scenario to serve as the only solution. In the interim, temporary appointees, authorized by a constitutional amendment, should serve.

I understand the objections of some of my colleagues, including the chairmen of the Judiciary and Rules Committees who testified before us, that the use of temporary appointed Members



would alter the structure of the body as a popularly elected entity since 1789. But we must live in the real world, not trapped in a “Matrix” where everything seems fine on the surface as long as people remain in denial about underlying truths.

Let me quote from our former colleague, the Republican Senator from Wyoming, Alan Simpson, a co-chair of the Continuity Commission. At its most recent public hearing, he urged support for a constitutional amendment and addressed the core issues head-on:

“...The troublesome part is this continual mantra which is we don’t want to alter the character of the House. ...It comes from the pride—I’m going to call it that—of saying we have always been directly elected by “the people” ....that phrase comes from those who oppose what we do. They say we can’t have anything like that because it would alter the character of the House, the people’s House, direct election, how troubling, how un-American, how undemocratic.....I want to ask them (a) question: what more could alter the character of your body than bodies?”

I agree with Senator Simpson that a functioning House, even in a temporarily modified form, is far better than no House at all. No House means no Congress, no legislation, and, in the end, no voice for the people, no more democracy.

Mr. Chairman, these issues have proven to be so intractable, due to differing views of Members and the fact that the jurisdiction over continuity issues is divided between our committee and Judiciary Committee in the House, that I am afraid we are moving along several different paths, but never coming together, or working together, like ships passing in the night.

But there may be a way to establish a greater unity of purpose. I heard the Speaker last Wednesday address the Centenary Conference on the Speakership in the Cannon Caucus

Room and emphasize the vital institutional decision-making and unifying role his office can play. He is a former teacher, a student of history. He is also the leader of the House.

I intend to write to the Speaker to urge him to cut through the jurisdictional divide and create opportunities for the House to act on both constitutional amendments, and statutes, in tandem, so that the House can address the entire range of continuity issues using the most appropriate legislative vehicles which the expertise of committees and Members can be harnessed to craft.

I will urge him to make this a priority issue for the House. This is non-partisan. This is critical. The Speaker can present a game plan to produce real solutions that will enhance our nation's constitutional structure and ensure the functioning of our democratic system under even the most adverse conditions. This should be a priority for all Members. I promise him my full support in that effort.

The CHAIRMAN. And we will go to other opening statements if we have them. Do we have other opening statement?

I have one thing I do want to mention that the Ranking Member jogged in my mind that I was remiss in mentioning. We have a Sensenbrenner bill he has jurisdiction, and the Ranking Member has mentioned that. We are looking for ways to accommodate for the comfort level of the votes and would take into consideration what Congressman Larson stated.

But, I need to point out that Representative Baird has been a tremendous individual in this entire process, even though I think from the constitutional amendment side it could take a long time for States to ratify. However, having said that, Representative Baird kept this on the front burner; he pushed the issue. There are also things that he has done both publicly and privately, frankly, through the traumas in the last couple of years, that have bettered everybody's life on this campus. And so I would be remiss if I didn't say that his bill is not without thought. Also, he has been a main motivator of keeping this issue on the front and keeping us working on it.

With that, I would lay before the committee House Resolution 2844 open to amendment.

[The information follows:]

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2844**

**OFFERED BY \_\_\_\_\_**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Continuity in Rep-  
3 resentation Act of 2003".

**4 SEC. 2. REQUIRING SPECIAL ELECTIONS TO BE HELD TO  
5 FILL VACANCIES IN HOUSE IN EXTRAOR-  
6 DINARY CIRCUMSTANCES.**

7 Section 26 of the Revised Statutes (2 U.S.C. 8) is  
8 amended—

9 (1) by striking "The time" and inserting "(a)  
10 IN GENERAL.—Except as provided in subsection (b),  
11 the time"; and

12 (2) by adding at the end the following new sub-  
13 section:

14 "(b) SPECIAL RULES IN EXTRAORDINARY CIR-  
15 CUMSTANCES.—

16 "(1) IN GENERAL.—In extraordinary cir-  
17 cumstances, the executive authority of any State in  
18 which a vacancy exists in its representation in the

1 House of Representatives shall issue a writ of elec-  
 2 tion to fill such vacancy by special election.

3 “(2) TIMING OF SPECIAL ELECTION.—A special  
 4 election held under this subsection to fill a vacancy  
 5 shall take place not later than 45 days after the  
 6 Speaker of the House of Representatives announces  
 7 that the vacancy exists, unless a regularly scheduled  
 8 general election for the office involved is to be held  
 9 at any time during the 75-day period which begins  
 10 on the date of the announcement of the vacancy.

11 “(3) NOMINATIONS BY PARTIES.—If a special  
 12 election is to be held under this subsection, not later  
 13 than 10 days after the Speaker announces that the  
 14 vacancy exists, the political parties of the State that  
 15 are authorized to nominate candidates by State law  
 16 may each nominate one candidate to run in the elec-  
 17 tion.

18 “(4) EXTRAORDINARY CIRCUMSTANCES.—

19 “(A) IN GENERAL.—In this subsection,  
 20 ‘extraordinary circumstances’ occur when the  
 21 Speaker of the House of Representatives an-  
 22 nounces that vacancies in the representation  
 23 from the States in the House exceed 100.

24 “(B) JUDICIAL REVIEW.—If any action is  
 25 brought for declaratory or injunctive relief to

1 challenge an announcement made under sub-  
2 paragraph (A), the following rules shall apply:

3 “(i) Not later than 2 days after the  
4 announcement, the action shall be filed in  
5 the United States District Court having ju-  
6 risdiction in the district of the Member of  
7 the House of Representatives whose seat  
8 has been announced to be vacant and shall  
9 be heard by a 3-judge court convened pur-  
10 suant to section 2284 of title 28, United  
11 States Code.

12 “(ii) A copy of the complaint shall be  
13 delivered promptly to the Clerk of the  
14 House of Representatives.

15 “(iii) A final decision in the action  
16 shall be made within 3 days of the filing  
17 of such action and shall not be reviewable.

18 “(iv) The executive authority of the  
19 State that contains the district of the  
20 Member of the House of Representatives  
21 whose seat has been announced to be va-  
22 cant shall have the right to intervene either  
23 in support of or opposition to the position  
24 of a party to the case regarding the an-  
25 nouncement of such vacancy.”.

Amend the title to read as follows: "A bill require States to hold special elections to fill vacancies in the House of Representatives not later than 45 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes."

The CHAIRMAN. And the Chair offers an amendment in the nature of a substitute.

The CHAIRMAN. Is there any discussion on the substitute?

Mr. LARSON. Mr. Chairman.

The CHAIRMAN. Mr. Larson.

Mr. LARSON. I don't know how much of a debate you want to offer on this. I have some specific questions that I have with respect to this. And what I would like is to—if I could at this time go through some of the questions. And again, obviously, if staff can answer those questions, fine; if not, we are happy to submit them before the matter comes to the floor, if we could get a response.

The CHAIRMAN. The Ranking Member can proceed.

Mr. LARSON. Thank you.

Mr. Chairman, a number of questions with respect to the provisions of H.R. 2844 for the Members, and possibly also for the staff, we feel are important before the matter comes to the floor.

The first is with respect to pulling the trigger. The first question is how exactly would the trigger be pulled so that special elections could take place, and what would happen if the House lacked a Speaker at the time, which was a question that was raised during our hearing?

The second question would be, how is the number of vacancies required to activate the process chosen? If the House can pass bills or motions with more than 100 Members absent under normal circumstances—which we did, by the way, four times Monday night, November 17—why would it somehow be illegitimate to do the same thing in time of catastrophe?

With regard to the question of disability, would the legislation do anything to address the issues of Member disability which could threaten the presence of a quorum on the floor under certain conditions? Some have even questioned the concept of defining a quorum.

What would happen if special elections already in progress to fill vacancies, preceding a catastrophe, resulted in reducing the number of vacancies below 100 before special elections triggered under the statutes would occur? Would the trigger, once pulled, be impossible to stop?

The grounds for contested elections: Isn't the bill an invitation to file election contests against the purported winners of such elections on a host of possible grounds presented through this legislation?

The concern that we have heard repeatedly about absentee and military voters: How can military personnel and their families and other Americans living abroad possibly become aware of a special election request, request an absentee ballot, receive one once candidates become known, and return them in a time frame contemplated by the statute? Or does the bill simply assume that somehow everything will work out?

Independent and other candidates on the ballot: Does the bill, by remaining silent about independent or nonmajority party candidates, assume that they could not run? Or does the bill assume that existing State laws could somehow cope within the 45-day total framework? What if they can't?



With regard to actions or not by political parties, how would political parties nominate candidates within the 10 days allowed? Would they be required to? What happens if they don't or can't?

And with regard to post-election procedures, wouldn't it take at least 60 days, or more in many cases, for the ultimate winners of the special elections to be known or finally certified?

And, last, Federal court actions. Now, this is not our jurisdiction, but doesn't the bill provide an unreasonably short time frame for litigation based on the Speaker's announcement of a vacancy while inviting lengthy litigation brought on other grounds?

And so, Mr. Chairman, those are concerns that we have with respect to the legislation as proposed, and we think in conversation with many offices of secretaries of States and knowing how this committee and so many Members in the Congress have grave concerns about unfunded State mandates and what we would be foisting upon the States, we think that these are questions that need to be answered and are problematic in going forward with this legislation.

The CHAIRMAN. Thank you. Is that all the questions you have?

Mr. LARSON. Yes.

The CHAIRMAN. Do you have any more?

Mr. LARSON. I do not have at this time have any more questions. My colleagues might, but I do not.

The CHAIRMAN. And we are going to take a look at this, but I just want to comment on just a couple of items if I could.

On the contested elections, I believe that we are going to have potentially contested elections with anything we do. I think we are going to have that possibility. As you are probably aware you and I are being sued in the Supreme Court for a contested election contest. It is by a candidate who thinks that this committee acted without merit, which is totally incorrect. But I do believe that in situations like this and with the trauma that would occur with whatever process you went with, you are going to have contested the election possibility, there is no question about that. When you have 100 seats running, in a certain time frame, you probably have the possibility of more contested elections that could occur.

As far as the post-election procedures, I believe that there are a lot of set procedures in most States. I know our elections were held within 12 days, in the State of Ohio, with the recount or certification. And I think that is going to have to be looked at and also to be considered. So, with regard to direct questions, there are questions that have to be answered and need to be answered, and we will need to talk to the bill's primary sponsor to get answers to these questions. But I did want to reflect right off the top.

Mr. LARSON. Mr. Chairman, also in fairness to you and to the proponents, we also have further data that might help them. The goal here on our part is to better help the Members, better help the legislation as it proceeds. But these are, I think, very legitimate questions that need to be answered, and obviously we would like to have them before they go to the floor.

The CHAIRMAN. And I think they are legitimate. Also, for example, another question that hasn't been answered completely in my mind, to be frank, is the disability question. It is a question I had throughout the discussion. I asked that question previously. We

have yet to get an answer about disability: Who determines disability, what is disability? Are you temporarily disabled? Is it permanent?

So I also agree. So we will talk with the bill's sponsor and get written answers to these and, by the way, any other questions you might have as this continues through the process.

Ms. MILLENDER-MCDONALD. Mr. Chairman, again I thank you for holding this meeting, too, because this question has been raised many times after 9/11. And I too, as the Ranking Member has so admirably indicated, would love to come to an amicable agreement on this issue. But there are a lot of questions that are left unanswered, and this is a very delicate issue.

One of the questions that come to mind for me is that we constantly talk about the Speaker. Now, we know when certain things happen, the Speaker is ushered on to an undisclosed area. But what if he does not have the opportunity to get there, will he or she have an opportunity to get to an undisclosed area for safety reasons? Is there anything that we can do in this bill to speak to the next person in authority, given that Speaker may not be the person who will be able to carry out the various sections of this bill?

And the other question that I have is if the number of Members' vacancies is less than 100, will the bill's provisions still take effect regarding the timing for a special election?

Those are some of the questions, along with the Ranking Member who spoke about the disabled, military personnel and others who are working overseas. We certainly have many times been concerned that they have been left out. So those are the questions that I have that will add to the ones that the Ranking Member has already very admirably outlined.

The CHAIRMAN. We will also pass those on to the bill's primary sponsor and make sure that we get written answers back, and any other questions that may generate off of those responses also to the members.

Other members? Is there any further discussion?

Mr. LARSON. Mr. Chairman, I would just like to—I know you usually say that I just wanted to seek unanimous consent to introduce the full text and questions that I raised during the course of the debate, and then ask that when a vote be taken, it be taken by roll.

The CHAIRMAN. Roll call? Okay. The Chair lays before the committee House Resolution 2844, open to an amendment.

And the Chair offers an amendment in the nature of a substitute. The question is on the amendment in the nature of a substitute.

Those in favor of the amendment will say aye.

Those opposed will say nay.

And the Ranking Member has asked for a roll call. The clerk will call the roll.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Yes.

The CLERK. Mr. Mica.

Mr. MICA. Aye.

The CLERK. Mr. Linder.

Mr. LINDER. Aye.

The CLERK. Mr. Doolittle.

[No response.]

The CLERK. Mr. Reynolds.

[No response.]

The CLERK. Mr. Larson.

Mr. LARSON. Nay.

The CLERK. Ms. Millender-McDonald.

Ms. MILLENDER-MCDONALD. No.

The CLERK. Mr. Brady.

Mr. BRADY. No.

The CLERK. Chairman Ney.

The CHAIRMAN. Aye.

The results are 4 in favor, 3 against. The amendment is agreed to.

The Chair recognizes Mr. Ehlers for the purpose of offering a motion.

Mr. EHLERS. Mr. Chairman, I move that the committee order House Resolution 2844, as amended, reported favorably to the House of Representatives.

The CHAIRMAN. The question is on the motion.

Those in favor of the motion will say aye.

Mr. LARSON. Mr. Chairman, could we have a recorded vote on that?

Mr. LARSON. Mr. Chairman, I announce pursuant to the provisions of clause 2 of rule XI, it is my intention to seek not less than 2 additional calendar days provided by the rule to prepare additional views to be filed with the committee report.

The CHAIRMAN. Without objection.

I ask unanimous consent that members have 7 legislative days for statements and material to be entered in the appropriate place in the record.

Without objection, the material will be entered.

[The information follows:]

[COMMITTEE INSERT TO COME]

The CHAIRMAN. I ask unanimous consent that staff be authorized to make technical and conforming changes on all matters considered by the committee at today's meeting.

Without objection, so ordered.

And, having completed our business, I want to thank all the members today. And the committee is hereby adjourned.

[Whereupon, at 3:51 p.m., the committee was adjourned.]